



STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

3000 Pacific Ave SE • PO Box 43075 • Olympia WA 98504-3075 • (360) 664-1600

May 5, 1999

TO: Eugene A. Prince, Chairman
Charles F. Brydon, Member
Jesse Farias, Member

FROM: Heidi Whisman, Non-Retail Compliance Programs Administrator *HW*

C: Dave Goyette, Director of Licensing and Regulation
Randy Reynolds, MTW Program Supervisor
Kim O'Neal, Assistant Attorney General

Subject: Freight Costs/Price Posting

Applicable Statute: RCW 66.28.180(3b) "Prices filed by a brewery or winery shall be uniform prices to all wholesalers on a state-wide bases less bona fide allowances for freight differentials."

Definitions Delivered Price

- A supplier's selling price that **includes** the cost of shipping the product to the distributor.
- Supplier pays the shipping cost direct to the carrier.
- Rates based on supplier volume.

FOB Price Freight On Board.

- A supplier's selling price that **does not** include the cost of shipping the product to the distributor.
- Distributor pays the shipping cost direct to the carrier.
- Rates based on distributor volume.

Situation The Wine Group (Franzia Brothers Winery, license #357043) is requesting permission to post "delivered" prices to one or more of their Washington distributors while the others continue to ship freight collect (FOB).
See Attached letter from Michelle King of The Wine Group.

- The winery would arrange for and pay the shipping costs to only those distributors in the areas serviced by the winery's national carriers.
- Distributors in these areas are likely to receive a lower freight rate than distributors in areas where this service is not offered by the winery.

Question for the Board May The Wine Group post FOB prices to all distributors, and additionally post Delivered prices on the same products to only select distributors?

Recommendation Denial. This request does not meet the "uniform" pricing requirement of RCW 66.28.180(3b) as it has been applied for at least the past 10 years.

EXHIBIT NO. 46 Date: 6/2/05
Deposition Of Heidi Whisman
CONNIE CHURCH, Court Reporter

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**PLAINTIFF'S
EXHIBIT**

CASE
NO. **CV04-0360P**

EXHIBIT
NO. **160**

Background

- Current interpretation of statute requires that the selling price, and any other offers in regard to the purchase of product, be uniform to all distributors.
- Suppliers are required to choose either FOB or Delivered pricing and indicate which on their price postings.
- All distributors must be charged that same FOB or Delivered price in keeping with the uniform requirement.
- The only non-uniform filing allowed is for freight allowances. Since 1971 the board has published requirements for filing freight allowances in MIW Bulletins (attached).

Pro's and Con's of Request

Pro's

- Would allow some distributors to receive lower freight rates than they could get on their own.
- Would allow the winery to get their product into certain areas at the lowest possible cost, which would filter down to the consumer.

Con's

- Delivered price would not be available to all of the winery's distributors.
- Violates current application of uniform pricing requirement and may violate statutory language.
- Difficult to enforce and ensure that price differences are due only to freight costs.
- Current price posting system cannot accept both Delivered and FOB prices for one product.

Related Issues

Discussion of this request leads to the following question and possible interpretations:

What does "less bona fide allowances for freight differentials" mean?

Current Interpretation: Suppliers may give a refund (allowance) to equalize freight costs. See MIW Bulletins dating back to 1971.

- Recognizes that freight costs are different for different areas of the state.
- Allows suppliers to refund part of the freight costs to equalize the freight for all distributors.
- Posting a Delivered price accomplishes this same equalization.

Possible Interpretation: Supplier prices to distributors may differ, but only in an amount that can be substantiated by differences in freight costs.

- Recognizes that freight costs are different for different areas of the state.
- Difficult, if not impossible, to verify that different invoice prices are due solely to differing freight costs.
- FOB pricing allows normal freight differentials to exist.

May 5, 1999
Freight Costs/Price Posting

Summary of Stakeholder Input
(Complete input is attached)

The Wine Group (no further input beyond original request submitted)

- Original request states the FOB prices would still be uniform to all distributors.
- The only difference would be that freight would be included as part of the invoice price to some distributors.
- Feels this is within the spirit and intent of "less bona fide allowances for freight differentials."

Anheuser-Busch

- States "...prices filed can differ for respective wholesalers if they are based upon freight differentials."

Washington Wine Institute

- Their board and members confused about details of this issue.
- Will be addressing this issue at their May 24, 1999 meeting.
- Request that the "status quo" be maintained if a decision is made by the Board prior to their meeting.

Washington Beer & Wine Wholesalers Association

- Request conflicts with the uniform price rule.
- Such a posting would result in a higher laid-in cost for distributors that ship freight compared to those who obtain freight delivered prices.
- Language recognizes freight differentials which may be equalized somewhat by the suppliers in the form of a bona fide allowance (refund).

Repercussions

- Any Price posting issue where there's enough motive for challenge could result in challenge of the whole system.
- Challenge equals the potential for state to pay triple damages.
- If request is denied, suppliers may be unhappy and express concern that Board is restricting business.
- If request is approved, distributors may be unhappy and state that it threatens the three-tier system and is a violation of the statutory "uniform" requirement.

<u>APPROVE*</u>	<u>DISAPPROVE</u>	<u>BOARD MEMBER</u>	<u>DATE</u>
✓		<i>Steve Flynn</i>	5-12-99
✓		<i>Charles R. Rydon</i>	5-12-99
✓		<i>[Signature]</i>	5-12-99

* Approval is of
my recommendation
to deny this request
HW

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THE WINE GROUP

Building Strong Brands

September 28, 1998

FAXED
9/28/98

Ms. Heidi Whisman
Washington State Liquor Control Board
M.I.W. Section
P.O. Box 43093
Olympia, Washington 98504-3093

Dear Ms. Whisman:

We are requesting the Board's approval to post freight delivered prices to one or more of our Washington wholesalers while the others continue to ship freight collect.

FOB prices would be uniform to all wholesalers while the freight would be included in the invoice price to the freight prepaid wholesalers.

This helps us gain freight efficiencies in areas serviced by our national carriers while maintaining consistent FOB prices to all wholesalers.

We feel this request is within the spirit and intent of the guidelines outlined in WSLCB Bulletin No. 95-1.

Thank you for all your help.

Sincerely,

Michelle L. King
Pricing Department

/mlk

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WASHINGTON STATE LIQUOR CONTROL BOARD
Post Office Box 1189
Olympia, Washington 98504

BULLETIN NO. 103

June 28, 1971

TO ALL BREWERS, DOMESTIC WINERIES, CERTIFICATE OF APPROVAL HOLDERS,
BEER AND/OR WINE IMPORTERS AND WHOLESALERS:

BONA FIDE ALLOWANCES FOR FREIGHT DIFFERENTIALS

Part 1 - Every beer and/or wine supplier who posts an F.O.B. point of origin price schedule and who wishes to make bona fide allowances for freight differentials must conform to the following procedures:

(a) File with the Board a schedule of prices to all importers and/or wholesalers, such prices to be uniform on a statewide basis, F.O.B. point of origin.

(b) File as a supplement to his schedule of prices a written memorandum showing the specific factor to be used in determining the amount of the freight allowance for each individual importer and/or wholesaler served. The freight allowance factor must be stated in cents per hundred pounds and applied to the gross weight of each shipment of merchandise.

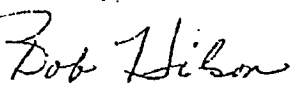
Such a factor must be based on the true and actual common carrier tariff applicable to shipments between the supplier and the point of destination. Any allowance factor set by a supplier shall be based on a median uniform weight classification selected by the supplier. The weight figure so adopted must be set at a realistic level, and any such factor which is deemed by the Board to be unrealistic will be disapproved.

(c) Any such freight allowance shall be shown as an integral part of each individual invoice on which the supplier bills the purchaser. The specific amount of the allowance must be shown on each invoice as a separate entry and deducted from the gross amount of the merchandise.

(d) Any importer or wholesaler who purchases beer or wine from the supplier will have the option of either transporting the merchandise himself or having it shipped by common carrier, freight collect. All importers or wholesalers who purchase from a supplier who posts F.O.B. prices and who makes a freight allowance are entitled to this allowance, regardless of whether they pick up the merchandise themselves or if the merchandise is shipped by common carrier.

(e) Every supplier who files a supplementary schedule of freight allowances should keep in mind that these allowances are subject to the same criteria governing regular prices filed under Regulations (49.5) (3) and (82) (6).

Part 2 - The procedure for those suppliers filing uniform delivered prices and who make freight allowances would differ from those covered in Part 1 only in points (a) and (d). Obviously, the prices posted would be uniform delivered on a statewide basis. If any freight allowances are to be made they would be applied only when the merchandise was picked up by the purchaser.


I. W. (Bob) Hilson, Supervisor
Beer and Wine Division

[S.N. 349, 6-28-71; 325]

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STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

March 5, 1986

M.I.W. BULLETIN 103

RE: BONA FIDE ALLOWANCES FOR FREIGHT DIFFERENTIALS

TO: ALL BREWERS, DOMESTIC WINERIES, CERTIFICATE OF APPROVAL
HOLDERS, BEER AND/OR WINE IMPORTERS AND WHOLESALERS:

Every beer and/or wine supplier who posts a freight on board (F.O.B.) point of origin price schedule and who wishes to make bona fide allowances for freight differentials must conform to the following procedures:

1. File with the Board a schedule of prices to all importers and/or wholesalers - such prices to be uniform on a statewide basis, F.O.B. point of origin.
2. File as a supplement to the schedule of prices a written memorandum showing the specific factor to be used in determining the amount of the freight allowance for each individual importer and/or wholesaler served. The freight allowance factor must be stated in cents per hundred pounds and applied to the gross weight of each shipment of merchandise.

Note: Such a factor must be based on the true and actual common carrier tariff applicable to shipments between the supplier and the point of destination. Any allowance factor set by a supplier shall be based on a median uniform weight classification selected by the supplier. The weight figure so adopted must be set at a realistic level, and any such factor which is deemed by the board to be unrealistic will be disapproved.

3. Any such freight allowance shall be shown as an integral part of each individual invoice on which the supplier bills the purchaser. The specific amount of the allowance must be shown on each invoice as a separate entry and deducted from the gross amount of the merchandise.
4. Any importer or wholesaler who purchases beer or wine from the supplier will have the option of either transporting the merchandise themselves or having it shipped by common carrier, freight collect. All importers or wholesalers who purchase from a supplier who posts F.O.B. prices and who makes a freight allowance are entitled to

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this allowance, regardless of whether they pick up the merchandise themselves or if the merchandise is shipped by common carrier.

5. Every supplier who files a supplementary schedule of freight allowances should keep in mind that these allowances are subject to the same criteria governing regular prices filed under WAC 314-20-105(3) and WAC 314-24-200(6).

The procedure for those suppliers filing uniform delivered prices and who make freight allowances would differ from those covered in the first paragraph above only in points 1 and 4. Obviously, the prices posted would be uniform delivered on a statewide basis. If any freight allowances are to be made they would be applied only when the merchandise was picked up the the purchaser.



Jan Britt, Supervisor
Manufacturers, Importers and
Wholesalers Division

REV 3/86

**Regulatory Services Division
Manufacturers, Importers, and Wholesalers Section**

Bulletin No. 95-1

Supersedes M.I.W. Bulletin 103, Dated March 5, 1986

DATE: November 16 1995

TO: All Brewers, Domestic Wineries, Certificate Of Approval Holders, and Beer and/or Wine Importers and Wholesalers

SUBJ: Allowances For Freight Differentials

Beer and/or wine suppliers who post a free-on-board (F.O.B.) point of origin price schedule and who make allowances for freight differentials must:

1. File a schedule of prices to all importers and/or wholesalers. The prices must be uniform statewide, F.O.B. point of origin.
2. File a supplement to the price schedule, to include the cost of manufacturing and packing each product. This schedule must include a detailed description of each product and each package.
3. File a supplement to the price schedule showing the specific factor to be used in determining the amount of the freight allowance for each individual importer and/or wholesaler served. The freight allowance factor must be stated in cents per hundred pounds and be applied to the gross weight of each shipment.

Note: The freight allowance factor must be based on the actual common carrier tariff applied to shipments between the supplier and the point of destination. Any allowance factor set by a supplier must be based on a median uniform weight classification selected by the supplier. The weight figure must be set at a realistic level. Any such factor which is deemed to be unrealistic will be disapproved.

4. The freight allowance must be shown on each invoice to the supplier as a separate entry and deducted from the gross amount.
5. Any importer or wholesaler who purchases beer or wine from the supplier will have the option of either transporting the merchandise themselves or having it shipped by common carrier, freight collect. If a supplier posts F.O.B. prices and makes a freight allowance all wholesalers and/or importers are entitled to this allowance (whether they pick up the merchandise themselves or the merchandise is shipped by common carrier).
6. The freight allowances are subject to the same criteria governing regular prices filed under. WAC 314-20-105(3) and WAC 314-24-200(6).

On the reverse of this bulletin is a preferred format for a schedule of freight allowances.

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